IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.MC.No. 1974 of 2007()

CC.1302/2004 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER: 1ST ACCUSED

RAJEEV,
SARASWATHI NILAYAM, (PALLATHU VEEDU),
KUTTOOR VILLAGE, PATHANAMTHITTA.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. RENUKA,
KAVUMPATTUVADAKKATHIL, MUTHUKATTUKARA,
NOORANADU.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1974 of 2007

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Dated this the 20th day of June, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 406 I.P.C. Proceedings have been initiated on the basis of a private complaint filed by the petitioner's wife. Cognizance has been taken. The matter is pending before the learned Magistrate. A warrant of arrest issued by the learned Magistrate is chasing the petitioner and it is in these circumstances that the petitioner has come to this Court with this petition under Section 482 Cr.P.C. According to the petitioner his absence was not willful and it was on account of reasons beyond his control. The application to condone his absence was rejected and non-bailable warrant was issued. The case now stands posted to 22.6.2007.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate on 22.6.2007. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that

appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. Hand over copy of the order.

(R. BASANT)
Judge

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